



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

September 23, 2014

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5.8.7.2.2.4

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
(CALIFORNIA, GULF STATES, AND SOUTH ATLANTIC)

DIRECTORS, CAMPUS COMPLIANCE OPERATIONS
(BROOKHAVEN AND MEMPHIS)

FROM: Rocco A. Steco */s/ Rocco A. Steco*
Acting Director, Collection Policy

SUBJECT: Offer in Compromise Payments Designated as Deposits

The purpose of this memorandum is to reissue Interim Guidance Memorandum SBSE-05-1013-0068, *Interim Guidance Memorandum for Offer in Compromise Payments Designated as Deposits*, which expires October 25, 2014. The instructions will be included in the next revision of Internal Revenue Manual (IRM) 5.8.2.3.1, 5.8.2.7.1 and 5.8.7.2.2.4.

This memorandum further defines when an offer should be returned for failure to submit the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) payment and/or application fee.

IRM 5.8.2.3.1(1), *Determining Processability*, provides six reasons an offer may be deemed not processable. One instance when an offer would be deemed as not processable is when the taxpayer fails to include the initial payment. The exception is when the taxpayer submits the application fee and a portion but not all of the required TIPRA payment as defined in IRM 5.8.2.7.1, *Processable Offers – Payment Processing*.

There have been instances where the taxpayer submits the required payments and also marks the Form 656 box for deposit in Section 6, *Designation of Down Payment and Deposit*, and enters the entire amount paid with the offer as a deposit.

Beginning October 25, 2013, for offers where the taxpayer marked the total amount of the payment as a deposit, the entire amount will be considered a deposit making the offer not processable for failure to submit the required TIPRA payment.

This change is based on a Counsel determination in recent litigation and is being implemented to acknowledge the taxpayer's right to designate payments as a deposit. Procedures in IRM 5.8.2.4 should be followed when returning the offer as not processable.

These procedures do not apply if the taxpayer marked the box for Low Income Certification in Section 4 of Form 656. In those cases, all funds will be posted as a deposit. If the offer examiner or offer specialist determines that the taxpayer does not qualify for the low income certification, follow current procedure and contact the taxpayer requesting any shortfall. See IRM 5.8.4.25, *Periodic Payments Required with Offer in Compromise Submission* and IRM 5.8.7.2.2, *Processable Returns*, for appropriate actions meeting the criteria.

If a case is inadvertently transferred to the field by COIC with the deposit box checked, the offer specialist should contact the taxpayer and explain that the deposit box cannot be checked if the monies were intended as the application fee and TIPRA payment. An amended Form 656 correcting the amount of the deposit must be secured prior to investigation of the offer. Any amount above the required application fee and payment may be considered a deposit with the agreement of the taxpayer and should be noted as such on the amended Form 656. If the contact is by telephone, allow 14 calendar days to sign and return the Form 656. If the taxpayer fails to return the Form 656, the offer should be returned for not responding to a request for additional information. Procedures defined in IRM 5.8.7.2.2.4, *Return for Failure to Provide Information*, should be followed.

If you have any questions, please contact me, or a member of your staff may contact Diane Morris, Senior Program Analyst. COIC personnel should direct any questions through the appropriate management chain.

cc: Chief, Appeals
Director, Campus Compliance Services
Director, Filing and Payment Compliance
Assistant Division Counsel, SBSE
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